

EXHIBIT B

Proposed *Curcio* Examination
of NG LAP SENG

The Government respectfully requests that the defendant be placed under oath, after which the Court ask questions with respect to the following:

I. Introductory Questions to Establish Competence

- A. Age
- B. Education
- C. Occupation
- D. Current medications
- E. Alcohol, drugs, or medications taken within the past 24 hours
- F. Is there anything interfering with your ability to understand what is happening here today?

II. Potential Conflict of Interest Posed by Defense Counsel's Representation of Certain Clients

- A. Are you aware that the Government has charged you with conspiring to bribe, and bribing, officials and employees with the United Nations ("UN")?
- B. Are you aware that the Government has alleged that at least one of the purposes of your bribes was to generate UN support for a conference center that you wanted to build in Macau, China using the Sun Kian IP Group?
- C. Are you aware that one of your attorneys, Hugh Mo, has previously represented certain representatives of, or individuals or entities associated with, the Government of the People's Republic of China, including (i) the Permanent Mission of the People's Republic of China to the United Nations, and (ii) the Consulate General of the People's Republic of China in New York?¹
- D. Do you understand that Mr. Mo, like all attorneys, has certain duties of loyalty and confidentiality to all of his clients, including former clients?
- E. Do you understand that, given Mr. Mo's duties to these other clients, it is possible that he could be restricted in the types of arguments he can make on your behalf? For example, if an argument on your behalf is adverse to a position of one of Mr. Mo's other clients, he

¹ The Government respectfully requests that the Court ask Mr. Mo to confirm whether he continues to represent any representatives of, or individuals or entities associated with, the Government of the People's Republic of China, or whether these are solely past relationships.

may feel that he cannot ethically make such an argument on your behalf. Do you understand that?

- F. Let me give you an example of how Mr. Mo's ability to make certain arguments might be limited. Understand that I am not suggesting that this is the only type of possible problem, nor am I assuming that the example that I am presenting is necessarily the truth. Suppose that Mr. Mo wanted to make an argument on your behalf that tended to cast a negative light on the Government of the People's Republic of China, or an argument on your behalf that tended to cast a negative light on the UN as a whole, or the Permanent Mission of the People's Republic of China to the UN. Mr. Mo might feel that he has an ethical duty not to present such an argument if he concludes that such an argument would be materially adverse to the interests of another client. He could, of course, make other arguments on your behalf. But he might be restricted in making any arguments that conflict with duties he owes to other current or former clients.
- G. Do you understand that example?
- H. Do you also understand that Mr. Mo's ability to call witnesses and cross-examine the Government's witnesses might be restricted to the extent that any such witnesses are employed by or associated with Mr. Mo's other clients?
- I. For example, suppose that the Government wants to call as a witness somebody who is associated with the Permanent Mission of the People's Republic of China to the United Nations. I am not suggesting the Government is likely to call such a witness, and I have no information indicating a current plan on the part of the Government to call such a witness. But if the Government did decide to call such a witness, Mr. Mo might be restricted in his ability to cross-examine the witness because, again, he may conclude that he cannot take a position that conflicts with duties he owes to another client.
- J. Do you understand that example?
- K. Tell me, in your own words, what your understanding is of the potential problem resulting from your attorney's representation of certain clients linked to the Government of the People's Republic of China?
- L. Do you understand that it is not possible as we sit here today to foresee all of the issues that might arise because of Mr. Mo's representation of certain other clients?

III. The Right to Conflict-Free Representation

- A. Do you understand that, in every criminal matter, including this one, you, as the defendant, are entitled to assistance of counsel whose loyalty to you is undivided, who is not subject to any factor that might in any way intrude upon any attorney's loyalty to your interests, that might negatively affect your attorney's ability to communicate with you freely and completely, or that might negatively affect your attorney's ability to make certain arguments?

- B. Have you received any inducements, promises or threats with regard to your choice of counsel in this case?
- C. Have you consulted with any attorney other than Mr. Mo about the potential conflict of interest that Mr. Mo faces in this case?
- D. *[IF YES]* Do you believe that you have had an adequate opportunity to consult with an attorney free from any conflict of interest about these issues prior to making a decision about whether to continue with Mr. Mo as your attorney?
- E. The Court is prepared to adjourn the remainder of this proceeding so that you may have further consultations with an attorney other than Mr. Mo about what I have described to you today. In addition, the Court can appoint an attorney for you to consult on this matter if you cannot afford one, assuming that you are willing to fill out a financial affidavit and assuming that I find that you qualify for free legal assistance based on the contents of that affidavit. Would you prefer to adjourn today's proceeding for you to give more thought to this matter?
- F. After considering all that I have said today about the potential conflicts that could restrict Mr. Mo's ability to defend you in this case, do you believe that it is in your best interest to continue with Mr. Mo as your attorney? Is that your wish?
- G. Do you understand that by choosing to continue with Mr. Mo as your attorney, you are waiving your right to be represented solely by an attorney who does not have a potential ethical conflict regarding the arguments he or she can make before the jury?
- H. Are you knowingly and voluntarily waiving your right to such representation?
- I. Do you agree to waive any post-conviction argument, on appeal or otherwise, by virtue of Mr. Mo's possible conflict of interest stemming from his representation of other clients who are representatives of or otherwise associated with the Government of the People's Republic of China?
- J. Is there anything that I have said that you wish to have explained further?
- K. Would you like more time to consider these matters before proceeding?